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Lamar Refuses to Pass Frank's Appeal to U. S. Supreme Court

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MAY REQUEST FULL BENCH TO PASS ON

MERITS OF APPEAL

Justice Lamar Refuses to Cer-

tify Writ of Error Which

Was Also Denied by Geor-

gia Supreme Court

LAST HOPE SEEMS TO

BE APPEAL TO GOVERNOR

Convicted Man Expected to Be Called Into Court Friday or Saturday for Re-sentence

(Special Dispatch to *The Journal*.)

WASHINGTON, Nov. 23.—Justice Lamar today refused to issue a Writ of Error to bring to the Supreme Court for Review the conviction of Leo M. Frank for the murder of Mary Phagan, a Factory girl, in Atlanta, Ga., in 1913.

Attorneys applied to Justice Lamar for the Writ on the grounds that a right under the federal constitution had been denied Frank when the jury’s verdict was returned during his absence from the Courtroom.

Henry Alexander, Attorney for Frank, stated he was unable to say whether the Application for the Writ would be presented to other Justices or not until he had consulted with his Associate, Henry Peeples, who is in the suburbs of the city. Justice Lamar, in denying the Application, explained his action in a written, informal Opinion.

HOLD UP DECISION.

Attorneys for Frank and Associate Justice Lamar decided not to give out the text of Justice Lamar's Opinion refusing the Writ until after a Conference of the Attorneys this afternoon. The Conference is to determine whether to carry the Application before the full Bench of the Supreme Court.

This will probably be done. Louis Marshall, eminent New York lawyer, is not here today, but will participate in the motion to the full Bench if one is made.

The Opinion of Justice Lamar was very brief. It proceeded on the premise that Frank was absent from Court voluntarily. The Opinion is based upon the statement that Frank was absent with the consent of his Attorneys when the verdict was returned.

If the Application is made to the full Bench of the Supreme Court on Frank's behalf, it cannot be made before Monday. It is possible that other Justices will be appealed to individually, and this action, if unfavorable, will be followed by an application to the full Court, on Monday, when it meets again. There is scarcely a thread of hope for Frank getting a Writ of Error.

Frank May Be Sentenced

To Hang on December 18

While Solicitor Hugh M. Dorsey declined to comment on the news from Washington of Justice Lamar's refusal to grant a Writ of Error in the Frank Case, it is understood that Frank will be brought into Court by means of a habeas corpus Writ Friday or Saturday of this week to be resentenced. The remittitur from the Supreme Court is due in the Superior Court Tuesday, and any time after it is received the Solicitor can move to have Frank resentenced.

Should Frank be carried to Court for resentence the latter part of this week, the probability is that the date for his execution will be fixed about three weeks from that date, about December 18.

After Frank has been resentenced, unless some legal move that is not known of can be made on Frank's behalf, his hope will rest with the Governor and the Pardon Board. An Application for Pardon or commutation of sentence would probably result in a brief respite until the case could be heard by the Pardoning Board and passed on by that Body to the Governor.

John L. Tye, of Tye, Peeples & Jordan, Attorneys for Frank who brought the motion to set aside the verdict, was informed by *The Journal* of Justice Lamar's refusal to grant a Writ of Error. He was asked what other recourse, at law, Frank has but declined to state. He did call attention, however, to the fact that when the Allens, of Virginia, were turned down by the Supreme Court Justice to whom the Attorneys first applied, that each Justice in turn was appealed to. Frank has the same right, but whether it will be exercised, Mr. Tye declined to intimate.

When Leo M. Frank was told of the decision against him in his cell at the Fulton County Tower, he received the news without

comments—except to say that he had not previously been informed. The disappointment which he must have felt was not shown in anything that he said or in his facial expression. He was talking to a friend when the reporters arrived. He said he would make no comment whatever, and did not know whether he would have a statement later on or not.